

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 752 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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KHANDUBHAI THAKORBHAI PATEL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Anil S. Dave , for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondents nos.1,2 and 3.

The detention order dated 22-1-1999 passed by the respondent no.1-Commissioner of Police, Surat City against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that a prohibition case vide CR no.725/98 dated 27-7-1998 was registered against the petitioner at Nashabandi Police Station(West) for the offences made punishable under the Bombay Prohibition Act. That in that case countrymade liquor has been seized from the possession of the petitioner and the case is pending investigation. Furthermore, two witnesses on assurance of their anonymity have supplied information about the bootlegging activity of the petitioner which pertains to incidents dated 29-12-1998 and 3-1-1999.

3. That in consideration of the said material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail and as such the subjective satisfaction having been vitiated the order is invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case also, on scrutiny of papers it appears that the detaining authority while considering the availability of alternative remedy has failed to consider the aspect of less drastic remedy of opposing and cancellation of bail granted to the petitioner in a

pending case which discloses the non application of mind on the part of the detaining authority . Thus, the subjective satisfaction arrived at by the detaining authority having been vitiated the impugned order is invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 22-1-1999 passed by the respondent no.1-Police Commissioner, Surat City against the petitioner is hereby quashed and set aside. The petitioner-detenu -Khandubhai Thakorbbhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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